



COMMONWEALTH of VIRGINIA

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BANKER STEEL CO., L.L.C.
FOR THE
MAIN PLANT (Wythe Road facility)
EPA ID No. VAD988213146
AND
SOUTH PLANT (Rangoon Road facility)
EPA ID No. VAD988218038**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Banker Steel Co., L.L.C., regarding the Main Plant and South Plant facilities located in Lynchburg, Virginia, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Banker Steel" means Banker Steel Co., L.L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Banker Steel is a "person" within the meaning of Va. Code § 10.1-1400.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia.
4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
8. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
9. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
10. "Main Plant" means the Banker Steel facility located at 1619 Wythe Road in Lynchburg, Virginia.
11. "Montague-Betts" means Montague-Betts Company, Inc., a predecessor in interest to Banker Steel.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
14. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
15. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

16. "South Plant" means the Banker Steel facility located at 351 Rangoon Road in Lynchburg, Virginia.
17. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. Banker Steel owns and operates two facilities in Lynchburg, Virginia. The facilities manufacture structural steel components. Operations at the facilities include sawing, drilling, and grinding of metal. The metal is also cleaned and painted. The operations at both facilities are subject to the Virginia Waste Management Act and the Regulations.
2. Montague-Betts submitted a RCRA Subtitle C Site Identification Form (received February 18, 1994) that gave notice of regulated waste activity at the Main Plant as a LQG of hazardous waste. Montague-Betts was issued EPA ID No. VAD988213146 for the Main Plant. In a subsequent form (received August 30, 2010), Banker Steel gave notice as an SQG of hazardous waste at the Main Plant.
3. Montague-Betts submitted a RCRA Subtitle C Site Identification Form (received June 10, 1992) that gave notice of regulated waste activity at the South Plant as a SQG of hazardous waste. Montague-Betts was issued EPA ID No. VAD988218038 for the South Plant. In a subsequent form (received February 18, 1994), Montague-Betts gave notice as a LQG of hazardous waste at the South Plant. On August 30, 2010, Banker Steel gave notice as a SQG of hazardous waste at the South Plant; and on September 28, 2010, Banker Steel gave notice as a LQG of hazardous waste at the South Plant. In a subsequent form (received December 29, 2010), Banker Steel gave notice as a SQG of hazardous waste at the South Plant.
4. At the Main Plant, Banker Steel generates waste paint and solvents, expired paint, spent fluorescent lamps and used oil which are solid wastes. The aforementioned wastes are also hazardous wastes and the waste codes associated with the waste paint and spent

solvent waste streams are D001 and F003; fluorescent lamps are generally a listed hazardous waste, D009; used oil, if characterized for disposal, is generally D001. The hazardous wastes are accumulated in containers at the Main Plant after generation.

5. At the South Plant, Banker Steel generates waste paint, solvents and expired paint, which are solid wastes. The aforementioned wastes are also hazardous wastes and the waste codes associated with the waste streams are D001 and F003. The hazardous wastes are accumulated in containers at the South Plant after generation.
6. On August 26, 2010, Department staff inspected the South Plant and on August 30, 2010, Department staff inspected the Main Plant. Both inspections were conducted to assess compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspections and follow-up information submitted to the Department by Banker Steel, Department staff made the following observations.
7. Banker Steel did not make hazardous waste determinations for the seven solid waste streams at the Main Plant and the six solid waste streams at the South Plant. 40 CFR 262.11 requires that a generator must determine whether his solid wastes are hazardous wastes.
8. Banker Steel did not provide training on proper hazardous waste handling requirements to the employee assigned the responsibility for environmental compliance at the Main Plant and South Plant. In addition, the employees at both facilities involved in the manufacturing process had not been trained on proper management of hazardous waste. 40 CFR 262.34(d)(5)(iii) requires a SQG of hazardous waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.
9. Banker Steel had accumulated at least 5 fifty-five gallon drums outside of Spray Bay #1 and at least 5 five gallon containers of spent solvent in the flammable storage cabinets at the Main Plant. Banker Steel had accumulated approximately 100 five gallon pails of expired paint, primer, hardeners, etc. in the "Flammable Liquid Storage Building" at the South Plant. In addition, there were 3 fifty-five gallon drums of spent methyl isobutyl ketone and waste paint accumulating at the South Plant. None of the containers, at both facilities, had been properly labeled with the accumulation start date. All of the aforementioned accumulated hazardous waste had been accumulating for greater than 180 days according to statements made by Banker Steel representatives. 40 CFR 262.34(d) allows a SQG to accumulate hazardous waste onsite for 180 days or less without a permit or interim status. 40 CFR 270.1 requires a permit for the treatment, storage, and disposal of hazardous waste. Banker Steel accumulated the hazardous waste for more than 180 days without obtaining the required permit.

10. Banker Steel, at both facilities, did not label any of the accumulated hazardous waste containers, listed in Paragraph 9 of this Section, with the accumulation start date and the words "Hazardous Waste". 40 CFR 262.34(d)(4) requires compliance with 40 CFR 262.34(a)(2) & (a)(3) which require that the date upon which each period of accumulation begins is to be clearly marked and visible for inspection on each container and that each container must be labeled with the words "Hazardous Waste".
11. Banker Steel was not performing weekly inspections of the containers of hazardous waste at both facilities. 40 CFR 265.174 requires that generators must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.
12. 40 CFR 262.34(d)(2), which references 40 CFR 265.173(a) requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. At the following locations, Banker Steel was not keeping the containers accumulating hazardous waste closed by securing the lids:
 - a. Main Plant
 - i. Outside Spray Bay #1 - 5 fifty-five gallon drums of waste paint related material and 20 five gallon pails of waste paint
 - ii. Area Adjacent to Spray Bay #1 – 25 pails of waste paint
 - iii. Inside Spray Bay #2 - 1 fifty-five gallon drum of waste paint and spent solvent
 - b. South Plant
 - i. Inside the Large Paint Bay – 2 fifty-five gallon drums of waste paint related material
 - ii. Inside the Small Paint Bay – 3 fifty-five gallon drums of waste paint and spent acetone/MIK mixture
 - iii. Inside the "Evaporation Chamber" – 4 fifty-five gallon drums of waste paint related material
13. Banker Steel, at both facilities, evaporated ignitable (D001) and listed (F003) hazardous waste and disposed of the dried containers in a dumpster for delivery to the landfill located in Lynchburg, VA. 40 CFR 268.40(a)(3) states that a prohibited waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in the table. The table identifies one of three types of treatment standard requirements and evaporation does not meet the treatment standard requirements.
14. Banker Steel, at both facilities, did not accompany the dried containers, identified in Paragraph 13 of this Section, with a one-time written notification that the waste does not meet the applicable treatment standards. 40 CFR 268, Land Disposal Restrictions, requires that generators of hazardous waste must determine whether the hazardous waste

is subject to land disposal restrictions, conduct treatment prior to land disposal, and determine the treatment meets the treatment standard. The generator must prepare a one-time written notice to the receiving facility for wastes that do not meet treatment standards.

15. Banker Steel, at both facilities, did not prepare hazardous waste manifests for its shipments of solid waste, which included hazardous waste, to the land fill located in Lynchburg, VA. 40 CFR 262.20 requires that a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal must prepare a manifest.
16. At the Main Plant, Banker Steel labeled approximately 24 fifty-five gallon drums of used oil as "waste oil." 9 VAC 20-60-279.22(C) requires that containers and aboveground storage tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".
17. At the Main Plant, Banker Steel did not clean-up and properly manage released used oil near the doors of Spray Bay #2 which was observed by DEQ staff during the inspection. 40 CFR 279.22(d) requires that a generator must stop the release of used oil, contain the released oil, clean up and manage properly the released used oil and repair or replace any leaking used oil storage containers or tanks.
18. On October 4, 2010, based on the inspection and follow-up information, the Department issued Notice of Violation No. 10-09-BRRO-L-002 to Banker Steel for the violations at the South Plant. On October 6, 2010, based on the inspection and follow-up information, the Department issued Notice of Violation No. 10-09-BRRO-L-003 to Banker Steel for the violations at the Main Plant. The violations for both facilities have been consolidated where applicable and are described in paragraphs C(7) through C(17), above.
19. On October 13, 2010, a representative of Banker Steel contacted the Department via telephone. The Department received e-mails from Banker Steel as a written response to the NOV's.
20. On January 6, 2011, Department staff met with representatives of Banker Steel to discuss the violations, including Banker Steel's written response.
21. Based on the results of aforementioned inspections, the January 6, 2011 meeting, and documentation submitted by Banker Steel to the Department, the Board concludes that Banker Steel has violated 40 CFR 262.11, 40 CFR 262.34(d)(5)(iii), 40 CFR 262.34(d), 40 CFR 270.1, 40 CFR 262.34(d)(4) which requires compliance with 40 CFR 262.34(a)(2) & (a)(3), 40 CFR 265.174, 40 CFR 262.34(d)(2), which references 40 CFR 265.173(a), 40 CFR 268.40(a)(3), 40 CFR 268, 40 CFR 262.20, 9 VAC 20-60-279.22 (c), and 40 CFR 279.22(d), as described in paragraphs C(7) through C(17), above.

22. Banker Steel has submitted documentation that verifies that the violations described in paragraphs C(7) through C(17), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Banker Steel, and Banker Steel agrees to:

Pay a civil charge of \$49,700 within 30 days of the effective date of the Order in settlement of the violations cited in this Order that occurred at the Main Plant and the South Plant.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Banker Steel shall include its Federal Employer Identification Number (FEIN) 54-1995535 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Banker Steel for good cause shown by Banker Steel, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Banker Steel admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Banker Steel consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Banker Steel declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Banker Steel to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Banker Steel shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Banker Steel shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Banker Steel shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Banker Steel intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Banker Steel. Nevertheless, Banker Steel agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Banker Steel petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Banker Steel.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Banker Steel from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Banker Steel and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Banker Steel certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Banker Steel to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Banker Steel.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

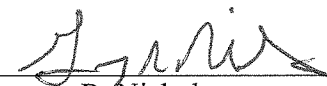
15. By its signature below, Banker Steel voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23rd day of September, 2011.



Robert J. Weld, Regional Director
Department of Environmental Quality

Banker Steel Co. LLC voluntarily agrees to the issuance of this Order.

Date: 8-18-11 By: , President
Gregory R. Nichols
Banker Steel Co. LLC

Commonwealth of Virginia

City/County of City of Lynchburg

The foregoing document was signed and acknowledged before me this 18th day of August, 2011, by Gregory R. Nichols who is President of Banker Steel Co. LLC, on behalf of the company.



Notary Public

249379

Registration No.

My commission expires: 2-28-12

Notary seal:

